

03-750 SMALL V. UNITED STATES

DECISION BELOW: 333 F3d 425

LOWER COURT CASE NUMBER: 02-2785

QUESTION PRESENTED:

The statute in question, § 922(g)(1) of Title 18, United States Code, makes it unlawful: (g) ...for any person (1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year: ... to possess in or affecting commerce, any firearm. In the instant matter, Petitioner's only conviction occurred in Okinawa, Japan, and it was this Japanese conviction that served as the predicate felony in this §922(g)(1) prosecution. The Petitioner filed a motion to dismiss the indictment arguing that foreign felonies were not intended to count as the term "in any court" means any court in the United States. The motion was denied. While the third Circuit's affirmance of the lower court is consistent with a 1989 decision of the Fourth Circuit and a 1986 decision of the Sixth Circuit, the Tenth Circuit in 2000 and the Second Circuit, on August 27, 2003, held that foreign convictions do not count. Consequently, a clear conflict exists among the five Circuit Courts which have addressed the issue.

The question presented, therefore, is whether the term "convicted in any court" contained in 18 U.S.C. § 922(g)(1) includes convictions entered in foreign courts.

CERT. GRANTED 3/29/2004